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7. Insurance (§ 660*)—Fire Insurance—Amount of Loss—Evidence Admissible.—Where by express provisions interest of insured was the original cost of improvements at a certain date, less monthly decreases named and deductions for depreciation, and insurer was not liable beyond actual cash value of property at time of loss, testimony tending to show the cash value of insured's interest in improvements at the time of fire was admissible.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 453; 17 Va.-W. Va. Enc. Dig. 562.]

Error to Law and Chancery Court of City of Norfolk.

Suit by the Shulman Company, Incorporated, against the Phoenix Insurance Company. Judgment for plaintiff and defendant brings error. Affirmed.

Williams & Tunstall, of Norfolk, for plaintiff in error.

Hicks, Morris, Garnett & Tunstall and *Tazewell Taylor*, all of Norfolk, for defendant in error.

COOPER v. NORFOLK SOUTHERN R. CO.

June 12, 1919.

[99 S. E. 606.]

1. Appeal and Error (§ 1061 (1)*)—Harmless Error—Demurrer to Evidence.—Failure to reduce demurrer to evidence to writing at time of announcement was not prejudicial to plaintiff, where it was agreed by counsel that it might be written out later, and where grounds of demurrer were thereafter delivered in writing to plaintiff's counsel and to court.

2. Appeal and Error (§ 719 (1)*)—Assignment of Error—Necessity for.—An irregularity, though excepted to, will not be considered on appeal, where not assigned as error.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 53.]

3. Pleading (§ 236 (4)*)—Amendment—Leave of Court—After Discharge of Jury.—In action against railroad for delay in delivery, court, under 4 Va. Code, p. 675, properly refused plaintiff right to amend declaration by changing date upon which it was railroad's duty to deliver from July 19th to July 16th, after proof of delivery upon July 19th, where plaintiff did not ask for leave to amend until after defendant had demurred to evidence and jury had returned verdict thereon and had been discharged, and where there was nothing

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

to show that dates were inserted in declaration by inadvertence or mistake.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 318, 319.]

4. Pleading (§ 236 (4)*)—Amendment—Leave—After Trial.—Trial courts are invested with broad powers in allowing amendment in the interest of justice, but have no power to disregard the mandatory provisions of 4 Code, p. 675, empowering court to permit new evidence to be admitted or a nonsuit to be taken until the jury retires, but not afterwards.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 43; 16 Va.-W. Va. Enc. Dig. 49.]

Error to Circuit Court, Norfolk County.

Action by W. H. Cooper against the Norfolk Southern Railroad Company. Judgment for defendant, and plaintiff brings error. Affirmed.

J. Edward Cole, of Norfolk, for plaintiff in error.

Jas. G. Martin, of Norfolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.